

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH
BENEFITS FUND, PIRELLI ARMSTRONG
RETIREE MEDICAL BENEFITS TRUST;
TEAMSTERS HEALTH & WELFARE FUND
OF PHILADELPHIA AND VICINITY;
PHILADELPHIA FEDERATION OF
TEACHERS HEALTH AND WELFARE
FUND; DISTRICT COUNCIL 37, AFSCME -
HEALTH & SECURITY PLAN; JUNE
SWAN; MAUREEN COWIE and BERNARD
GORTER,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri
corporation; and McKESSON
CORPORATION, a Delaware corporation,

Defendants.

C.A. No. 1:05-CV-11148-PBS

**DECLARATION OF STEVE W. BERMAN IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO MCKESSON'S MOTION TO EXTEND DISCOVERY**

I, Steve W. Berman, hereby declare that:

1. I am a partner of Hagens Berman Sobol Shapiro LLP ("HBSS"), resident in its Seattle, Washington, office, and I am one of counsel for the plaintiffs in the above-captioned matter. I submit this declaration in support of Plaintiffs' Opposition to McKesson's Motion to Extend Discovery.

2. In October 2006, Plaintiffs agreed to make the materials that were produced to them in the *AWP* matter available to McKesson. Plaintiffs offered to let McKesson inspect these documents, which are housed at Plaintiffs' counsel's respective places of business. McKesson inspected documents at the offices of some of Plaintiffs' counsel in 2006 but did not attempt to

inspect the hundreds of boxes of documents stored at the Boston office of HBSS until March of this year. Periodically McKesson has requested additional materials, e.g., documents or deposition transcripts produced in the state AWP cases. Plaintiffs have responded promptly to their requests.

3. McKesson purposely delayed scheduling of the depositions of its own employees. For example, Plaintiffs originally notified McKesson of their intent to depose Jeff Herzfeld and David Silko on February 8. Attached as Exhibit 1 is our February 8 e-mail to McKesson attorney, Tiffany Cheung to request available dates for their depositions. Two weeks later we reminded McKesson that it had not responded to our request for available dates. McKesson did not respond. It was not until March 8, a full month later, when we sent out a deposition notice for Mr. Herzfeld and Mr. Silko that McKesson decided to inform us that they no longer were employed by McKesson but that it would make them available on other dates. McKesson ultimately selected dates in mid and late April.

4. We also notified McKesson of our intent to depose John Bonner and Greg Yonko on March 9, and requested available dates at that time. Attached as Exhibit 2 is our March 9 e-mail to Ms. Cheung to request the availability of these witnesses. Again we waited two weeks for a response and when we did not receive one, we sent our notices of the depositions. Only then did McKesson respond, refusing to make its employees available on the noted dates, offering instead to make them available on May 3 and 15 respectively. Through these pointless delays McKesson wasted an opportunity to schedule the depositions of Mr. Herzfeld and Mr. Silko in March and the depositions of Mr. Bonner and Mr. Yonko in March or April, thereby freeing up available time for additional discovery.

I certify under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of April 2007.

/s/ Steve W. Berman

STEVE W. BERMAN

CERTIFICATE OF SERVICE

I, Steve W. Berman, hereby certify that a true and correct copy of the above document was served on the attorney of record for each party via the Court's electronic filing system this 26th day of April, 2007.

By /s/ Steve W. Berman
Steve W. Berman
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
(206) 623-7292

Exhibit 1

Barbara Mahoney

From: Barbara Mahoney
Sent: Thursday, February 08, 2007 3:19 PM
To: Cheung, Tiffany; Nick Styant-Browne
Cc: Steve Berman
Subject: depositions

Tiffany,

We would like to take the depositions of the following people from McKesson:

Jeff Herzfeld, Erlinda Thomas, David Silko; 30(b)(6) re AccessHealth; Valu-Rite and any retail or mail-order pharmacy businesses owned or managed by McKesson. We propose any of the following dates, but would prefer that no more than two deps occur in a row to allow adequate preparation for each:

March 6, 7, 8, 12, 13, 20, 21, 22, 23, 26, 27

Please advise by next Thursday the times and dates these witnesses will be available. Please also let us know the name and the title of the person(s) designated as McKesson's 30(b)(6) witness(es) once this has been determined.

Barbara

4/26/2007

Exhibit 2

Barbara Mahoney

From: Barbara Mahoney
Sent: Friday, March 09, 2007 11:30 AM
To: 'Cheung, Tiffany'
Cc: FDB
Subject: Additional McKesson deps

Tiffany,

I received your letter regarding the depositions of Jeff Herzfeld and David Silko. Please let us know as soon as you can if Mr. Herzfeld is not available on March 29, and if so, any alternative dates, and whether you have discovered the whereabouts of Mr. Silko.

We would also like to take the depositions of Bob James, John Bonner & Greg Yonko. We offer the following dates:

April 16, 17, 19, 27, 30. Please let us know next week, which dates they would be available.

Barbara

4/26/2007